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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,514	09/05/2003	John P. Schromen	P06363US00	8029
22885	7590	05/12/2004	EXAMINER	
MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309-2721			KOVACS, ARPAD F	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 05/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/656,514

Applicant(s)

SCHROMEN ET AL.

Examiner

Árpád Fábián Kovács

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/5/2003
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it contains legal phraseology, such as "said" and/or "means". Correction is required.

See MPEP § 608.01(b).

**Claim Rejections - 35 USC § 102**

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim(s) 1-3, 6-8, 11-19 is/are rejected under 35 U.S.C. 102(b) as being anticipated  
by Wagner, Jr (3858814).

Wagner discloses:

Claims 1, 6:

first & second track assembly / sprockets (col. 2, ln 25-26; ref 22 & 24 & lower ends);  
lift assembly chain/belt trained around the upper & lower ends (col. 2, ln 29; ref 26, 28)  
& having front & rear belt (chain) surface (fig 1);  
power/drive source to drive at least one of the upper and lower ends (col. 2, ln 28);

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Claims 2, 3, 7, 8:

frame (col. 2, ln 15); vanes/paddles (ref 36) independently adjustable (fig 4; col. 3, ln 15-17);

Claims 11:

first & second track assembly (col. 2, ln 25-26; ref 22 & 24 & lower ends);

belt trained around the upper & lower ends (col. 2, ln 29; ref 26, 28) & having front & rear belt (chain) surface (fig 1);

Claims 12, 13:

vanes/paddles (ref 36) independently adjustable (fig 4; col. 3, ln 15-17);

Claims 14-19:

belt trained around the upper & lower ends (col. 2, ln 29; ref 26, 28) & having front & rear belt (chain) surface (fig 1);

1st & 2nd pit & channel (at ref 34), moving the belt assembly along the length of the pit & both directions (one upward & another downward the belt/chain).

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As applied to claim(s) 11-19, in view of the structure disclosed/taught by Wagner, the method of operating/using the device is inherent since it is the normal and logical manner in which the device is used.

**Claim Rejections - 35 USC § 103**

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim(s) 4-5, 9-10 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner, Jr (3858814), in view of Merten et al (5641058).

Wagner discloses the claimed device except for showing a hydraulic belt/chain tightener.

Merten discloses that it is known in the art to provide a hydraulic tightener for endless belts in the form of chains or the like (it is noted that chains are known to be a

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sub group of belts as taught by Merten).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the belt of Wagner with the teachings of Merten, in order to utilize an improved and more accurate belt tightener so that an optimum chain/belt tension is set automatically (Wagner: Abstract).

#### **4. Comments Regarding the Claims:**

In order to expedite prosecution, Examiner provided rejection to all of the claims, even though that Claims 11-19 are method of using and/or application of a generic belt assembly, and claims 14-19 recite a pit feature not present in the method claims 11-13. Depending on Applicant's amendment of the claims, claims 1-10 appear to contain subject matter which would be grouped together for restriction purposes.

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**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Buhne, Nevarez, Sr, Ingram, Butler et al., Schultz, Ackerman, Roman, Sharp, Young, Teixeira, Cobey, Cobey (645), Francis, Barber, Hofer, Lundberg, Ashton, Eischens, Toews.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Árpád Fábíán Kovács whose telephone number is 703-308-5897. The examiner can normally be reached on Mo-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308 3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Árpád Fábíán Kovács  
Primary Examiner  
Art Unit 3671

ÁFK